

Town of Mashpee

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Planning Board Minutes 10-02-2013

Mashpee Planning Board

Minutes of Meeting

October 2, 2013 at 7:00 p.m.

Waquoit Meeting Room, Mashpee Town Hall

Approved 10/16/13

Planning Board Members Present: Chairman George Petersen, Dennis Balzarini, David Kooharian, Joe Cummings

Also Present: Tom Fudala-Town Planner, Charles Rowley-Consultant Engineer

Absent: Mary Waygan, Joe Mullin

CALL TO ORDER

The Town of Mashpee Planning Board meeting was opened with a quorum in the Waquoit Meeting Room at Mashpee Town Hall by Chairman Petersen at 7:00 p.m. on Wednesday, October 2, 2013 and the Pledge of Allegiance was recited.

APPROVAL OF MINUTES—September 18, 2013

Minutes were placed on hold for approval.

TOWN ROAD TAKING

Planning Board recommendation on October 21, 2013 Annual Town Meeting Article 18 to take an easement for public access in the layout of an extension of Market Street south to Jobs Fishing Road-Tom Feronti, representing Mashpee Commons, distributed a narrative and copies of the plan. Mr. Feronti referenced the initial 2007 permit, changes to the economy since that time, and a State task force initiated to review potential 40B projects. Mr. Feronti announced that the task force identified Mashpee Commons as one of the more viable projects and has worked to help facilitate the process. The task force recommended a municipal grant that would require collaboration between Mashpee and Mashpee Commons, but with no financial responsibility to the Town, should the grant be awarded. The easement being requested was a function of the grant. Mr. Balzarini inquired about maintenance of the street and the long term impact of the road taking based on future development and Mr. Fudala stated that the road taking would be different from typical road takings. Mr. Feronti confirmed that care and time was taken in the development of the language for the road taking, which involved Town Counsel and the Town Manager. Mr. Kooharian inquired whether the road was present on the master plan and Mr. Feronti confirmed that it was. Chairman Petersen inquired whether the road would be installed ahead of the development and Mr. Feronti responded that the grant required that the project be shovel ready and could begin the road in November, should the grant be awarded and all other approvals be in place. Mr. Rowley inquired about the 36 feet and Mr. Feronti responded that it was curb to curb, the travel lane and beyond to parking. Mr. Rowley explained that an easement was being granted over the pavement in order to acquire the funding to construct the roadway, ensuring the public right to travel over the pavement. Mr. Rowley confirmed that it would not impact the design or construction and that it was more of a technical issue. It was noted that the grade would be a challenge and Mr. Feronti confirmed that there was a 7% pitch.

MOTION: Mr. Balzarini made a motion to recommend approval. Mr. Kooharian seconded the motion. All voted unanimously.

PUBLIC HEARING

Four Zoning articles proposed for approval on the October 21, 2013 Annual Town Meeting warrant (Board needs to vote on recommendations to Town Meeting on each article)

astewater treatment language for Section 174-45 uses

,000 sq. ft. floor area for assisted living in C-3 District

% affordable housing in OSID and Commercial Center projects

edical Marijuana Treatment Center zoning regulations

Chairman Petersen opened the public hearing at 7:20 p.m. and read for the record the public hearing notice. The Warrant Articles were in Board members' packets.

Article 19-Mr. Fudala summarized the Article regarding wastewater which replaced use of “plant” with “system.” “System effluent” was also included in the Article. There was no public comment.

MOTION: Mr. Balzarini made a motion to approve Article 19. Mr. Kooharian seconded the motion. All voted unanimously.

Article 20-Mr. Fudala stated that the Article allowed that assisted living facilities have a first floor not exceeding 50,000 square feet but it had been requested that wording include “less than two stories.” Ted Tye of National Development met with Southport residents and made the request to change the wording due to concerns expressed about possible future expansion. Mr. Fudala indicated that the Article would apply only to the C-3 Zone and for the particular use. Mr. Tye stated that he met with the residents of Southport and wished to gain support for the project from the neighbors. Mr. Tye was willing to commit to no future expansion of the facility and added that 19 of the 20 acres would be conservation restriction protected.

MOTION: Mr. Balzarini made a motion to recommend approval of Article 20, if the amendment needed to be made, in place of “two stories” use “less than.” Mr. Kooharian seconded the motion. All voted unanimously.

Article 21-Mr. Fudala read the explanation of the Article. There were no comments from Board members or the public.

MOTION: Mr. Balzarini made a motion to recommend approval for Article 21 as written. Mr. Kooharian seconded the motion. All voted unanimously.

Article 22-Mr. Fudala read the explanation and stated that the moratorium established in May would expire the night of the Town Meeting. If the Article was not passed, there would be no regulation in place. There was agreement from members that the Article had been discussed previously and there was no public comment.

MOTION: Mr. Balzarini made a motion to recommend approval of Article 22. Mr. Kooharian seconded the motion. All voted unanimously.

MOTION: Mr. Balzarini made a motion to close the public hearing for the four Zoning Articles. Mr. Kooharian seconded the motion. All voted unanimously.

7:30 Applicant: Federal National Mortgage Association c/o Cotuit Solar LLC

Location: 36 Savanna’s Path / Trinity Place

Request: Approval of 1-lot definitive subdivision plan and road designs (Continued from 9/18)

Mr. Fudala reported that an email had been received from Joe Hackler, Cotuit Solar, requesting a continuation. Mr. Rowley confirmed that he had a conversation with the applicant and it was determined that they would return with a completed plan and that other concerns had been discussed. Mr. Rowley indicated that waivers would need to be listed and documented with the application. Mr. Fudala stated that the next meeting would be the last opportunity to make a decision, unless the applicant requested that the Board extend their review of the application.

MOTION: Mr. Balzarini made a motion to continue the public hearing to October 16th at 7:10 p.m. Mr. Kooharian seconded the motion. All voted unanimously.

8:00 Applicant: BCDM, LLC

Location: On and between Blue Castle Drive and Degress Road, identified on the Mashpee Assessors Maps as Map 104, Blocks 14, 20 and 48

Request: Approval of a Special Permit for a 16 lot cluster subdivision (Continued from 9/18)

8:00 Applicant: BCDM, LLC

Location: On and between Blue Castle Drive and Degress Road, identified on the Mashpee Assessors Maps as Map 104, Blocks 14, 20 and 48

Request: Approve 16 lot cluster subdivision Definitive Subdivision Plan (Continued from 9/18)

The appointed time having arrived, Chairman Petersen opened the public hearing and read for the record the public hearing notices. Mr. Fudala reported that a letter had been received requesting a continuance to November 20 and waiving the Planning Board's time requirements. Mr. Fudala expressed concern that sitting member Mary Waygan was not present at the meeting and recommended that no testimony occur because Ms. Waygan was not present. A letter received from Town Counsel Patrick Costello indicated that his position had changed and cited case law indicating that the Planning Board had greater authority regarding off-site improvements to roads. Copies of both documents were provided to Board members and added to the meeting file. The Chair agreed that he wished to have Ms. Waygan as part of the conversation.

MOTION: Mr. Balzarini made a motion to continue the public hearing.

Erik Lebrano, Blue Castle Drive, questioned the continuance and expressed frustration that the neighbors were not notified of the continuance and why the applicant was not present. The Chair explained that the letter was a formal means of continuing a hearing.

Tim Dorsey, Blue Castle Drive, requested that the Town Counsel letter be read into the public record. Chairman Petersen read the letter. Mr. Costello's letter shared his opinion "that the Planning Board had legal authority to require modifications or improvements to public or private ways affording access to or from a proposed subdivision" and that they "may deny an application for special permit if, based upon the record, it concludes that the proposed access from a public way to a subdivision is inadequate." In the letter, Mr. Costello referenced case law supporting his opinion. Mr. Costello also noted that the Planning Board could consider public safety and traffic flow concerns. Mr. Dorsey summarized that the Planning Board could be authorized to require pavement of the road and Mr. Balzarini pointed out that improvements to the road could be requested, but not necessarily paving. Mr. Fudala stated that the developer could be required to do whatever was necessary to achieve the goal of public safety. Mr. Dorsey stated that it was a bad situation and to make it right and safe, it would need to be brought up to code and paved. Mr. Balzarini inquired whether the residents realized paving the road would require that residents could lose some of the property.

It was pointed out that discussion regarding the issue could now prevent Ms. Waygan from participating in the decision, though she could review the record, the tape and the minutes from one missed hearing. Mr. Fudala indicated that he would forward Town Counsel's letter to the applicant.

Kevin Bino, representing his mother at Blue Castle Drive, referenced the letter and the opportunities held by the Planning Board. Mr. Bino expressed concern regarding the density of the development, but it was pointed out that the project was a cluster development. Mr. Bino also expressed concern about the maintenance of the road and the developer's unwillingness to meet with the residents.

MOTION: Mr. Balzarini made a motion to continue the public hearing to November 20th at 7:10 p.m. Mr. Kooharian seconded the motion. All voted unanimously.

Mr. Fudala stated that November 20 would be the last date for a decision unless an extension was granted by the applicant. It was stated that any letters regarding concerns about the project could be forwarded to the Planning Board. Mr. Fudala stated that no additional information had been received from DPW Director Catherine Laurent regarding the radar.

BOARD ITEMS

Old Business

Discussion of Greenways Proposal and Surrounding Commercial Property-There was no update available.

- MMR Military Civilian Community Council-Update of MMR Joint Land Use

Study-Mr. Kooharian was unable to attend the meeting.

Design Review Committee-Mr. Cummings reported that a two-story assisted living building was discussed for 68 Great Neck Road South. Mr. Cummings indicated that the structure would be 300 feet from Windchime, across the power line with no buffer. There was discussion that the vegetation could be cleared by the power company. Mr. Cummings also reported that the parking, dumpster and driveway areas were all open. It was noted that the even condominium units located at 2-34 Gold Leaf would have a view of the complex. Mr. Fudala reported that they just filed with Natural Heritage and would be considered by the Cape Cod Commission prior to review by the Planning Board.

Community Preservation Committee-No update at this time.

Charter Review-No update at this time.

Environmental Oversight Committee-Chairman Petersen reported that a letter had been drafted supporting grants being sought by the Conservation Commission but that they did not end up applying for the grants. Mr. Fudala reported that, although the DCPC was passed, Board of Health regulations addressing fertilizer management would need to be in place by January and Board of Health agents have expressed their unwillingness to do so because of enforcement concerns.

Historic District Commission- No update

New Business

Request from Sandwich Planning Board for Letter Waiver of Zoning Hearing Notice- Mr. Fudala reported that Sandwich was requesting a waiver from the adjacent towns' notice requirement. A letter would be needed from the Planning Board. Chairman Petersen read the letter for the record. There was no further discussion.

MOTION: Mr. Balzarini made a motion to send the letter to the Sandwich Planning Board waiving their request to notify the town for the Zoning Article. Mr. Kooharian seconded the motion. All voted unanimously.

C. Rowley Expense Vouchers-Invoices were received in the amount of \$380 for Southport and \$432.50 for regular Planning Board services.

MOTION: Mr. Balzarini made a motion to pay Mr. Rowley \$432.50 for September services rendered. Mr. Kooharian seconded the motion. All voted unanimously.

MOTION: Mr. Balzarini made a motion to pay Mr. Rowley \$380 for Southport in September. Mr. Kooharian seconded the motion. All voted unanimously.

The vouchers were signed by Board members.

Amendment to Cape Cod Commission Regulations Chapter H-Mr. Fudala stated that the public hearing took place in August and was regarding the regulations for DRI thresholds. The item will be added to the next agenda for further discussion.

CORRESPONDENCE

-Ted Tye, National Development – Request for amendment to 10-21-13 ATM Article 20

- Lou Gonzaga (of Hyannis) – Blank petition form for Mashpee TM article to set ballot question re Mashpee withdrawal from Cape Cod Commission-The Chair referenced the Town Manager's email requesting feedback from the Planning Board at the Board of Selectmen meeting. The Chair reported that Assembly Delegates would report to the Board of Selectmen on a more regular basis regarding Cape Cod Commission business. The Chair recommended emailing to Mr. Fudala any member thoughts regarding the Cape Cod Commission in order to provide an update to the Board of Selectmen. There was discussion about the emails received from individuals about seceding from the Cape Cod Commission and it was pointed out that the senders were from towns other than Mashpee.

ADJOURNMENT

MOTION: Mr. Balzarini made a motion to adjourn. Mr. Kooharian seconded the motion. All voted unanimously. The meeting adjourned at 8:27 p.m.

Respectfully submitted,

Jennifer M. Clifford
Board Secretary

LIST OF DOCUMENTS

- Article 18
- Market Street ROW Easement
- Layout of Market Street
- Zoning Articles 19, 20, 21, 22
- National Development Letter Regarding Zoning Amendment
- Joe Hackler, Cotuit Solar, Email
- Cape Cod Commission Amendment to Chapter H
- BCDM Letter Requesting Continuance
- Town Counsel Letter Regarding BCDM Development
- Massachusetts Land Court Referenced Case Law
- Gooseberry Island Variance Petition
- Friends of Mashpee National Wildlife Refuge Annual Meeting
- Citizen Planner Training Collaborative Workshops
- Mashpee Flu Clinic